

Before the
FCC MAIL SECTION Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Implementation of Section 8 of the Cable
Television Consumer Protection
and Competition Act of 1992

Consumer Protection and Customer
Service

MM Docket No. 92-263

FCC MAIL SECTION
DEC 11 4 17 PM '92

NOTICE OF PROPOSED RULE MAKING

Adopted: December 10, 1992

; Released: December 11, 1992

Comment Date: January 11, 1993

Reply Comment Date: January 26, 1993

By the Commission:

I. INTRODUCTION

1. On October 5, 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992", "Cable Act", or "Act").¹ Under Section 8 of this Act, *inter alia*, the Commission must prescribe standards governing cable customer service within 180 days after enactment, *i.e.*, by April 3, 1993. Such standards shall address, at a minimum, cable system office hours, telephone availability, installations, outages, service calls, and communications between the cable operator and subscriber, including billing and refunds. The Cable Act does not provide the Commission independent enforcement authority over these standards. Rather, it allows a State or local government authority to adopt and enforce the Federal standards or more stringent customer service standards. By this Notice of Proposed Rule Making ("NPRM"), we seek comment on the adoption and implementation of this section.

II. BACKGROUND

2. Prior to the new Cable Act, local governments were permitted to enforce customer service requirements.² Despite this ability, Congress has found continued and widespread customer dissatisfaction with many operators, *e.g.*, phones are not answered promptly, offices

¹ Publ. L. No. 102-385, 106 Stat. 1460 (1992) (For ease of reference, citations herein are made to the Communications Act of 1934, as amended by the Cable Act of 1992).

² Pub. L. No. 98-549 Section 632, 98 Stat. 2780 (1984).

are open for a minimal number of hours, and service calls take too long.³ In response to earlier demand for improved customer service, in February 1990 the National Cable Television Association ("NCTA") adopted "Recommended Industry Customer Service Standards." These standards, according to the NCTA, provide each community and cable system "reasonable flexibility" in implementation, and address such matters as telephone response time, office hours, installation, outages and service calls, rate changes, channel repositioning, and billing and refunds.⁴ The NCTA standards are voluntary, however, and cannot be enforced by the industry due to antitrust law, or by a franchising authority, unless such provisions are specifically included in the franchising agreement.⁵ The Congress, although commending the industry for taking steps to improve the quality of customer service, still regards customer service as "an area of paramount concern"⁶ and questions the extent to which cable systems are complying with voluntary standards.⁷ Accordingly, Congress enacted customer service provisions as part of the Cable Act of 1992.

3. Section 8 of the Cable Act, entitled "Consumer Protection and Customer Service", amends section 632 of the Communications Act of 1934 (47 U.S.C. 552) as follows:

"(a) FRANCHISING AUTHORITY ENFORCEMENT.- A franchising authority may establish and enforce-

"(1) customer service requirements of the cable operator and

"(2) construction schedules and other construction-related performance requirements, including construction-related performance requirements, of the cable operator.

"(b) COMMISSION STANDARDS.-The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing-

"(1) cable system office hours and telephone availability;

"(2) installations, outages, and service calls; and

"(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

"(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.-

"(1) CONSUMER PROTECTION LAWS.-Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

³ Senate Comm. on Commerce, Science and Transportation, S. Conf. Rep. No. 102-92, 102d Cong., 2d Sess. at 20 (1991).

⁴ Testimony of James P. Mooney, President and Chief Executive Officer, National Cable Television Association, Legislative hearing of the House Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce to consider pending cable legislation, March 1, 1990.

⁵ See S. Conf. Rep. No. 102-92, supra, at 20.

⁶ House Comm. on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong. 2d Sess. at 105 (1992).

⁷ See S. Conf. Rep. No. 102-92, supra, at 20-21. See also H.R. Rep. No. 102-628, supra, at 36 (concerns raised over whether a "self-policing mechanism can be successful in addressing the serious concerns of consumers about the cable industry's customer service practices").

"(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.-Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

III. DISCUSSION

The Customer Service Standards Enforcement Process

4. Historically, customer service standards applicable to the cable television industry have either been established by system operators on their own or have been imposed as regulatory obligations by state or municipal governments, typically as part of the franchise process. Such standards have not been imposed or enforced by the Federal government. The customer service standards provisions of the 1992 Cable Act create a new role for the Commission in this area, mandating that we establish standards that may be adopted and enforced by State and local governments but, following the historical pattern, providing the Commission no role in the enforcement of these standards. What remains unclear is the specific mechanism whereby the Commission's standards become "service requirements" for local cable system operators.⁸ How Congress intended this process to function is thus a threshold question on which we seek comment. If it is believed that the Federal standards are in some sense self-executing, without further implementing action by State or local authorities necessary, then it is particularly critical that the substance of the standards be appropriate for a broad range of types of communities and economic circumstances. If, under the statute, the Commission's standards are not self-executing, we seek comment on what actions, if any, a franchising authority must undertake in order to impose the Commission's standards, or some other standards. For example, must the franchising authority affirmatively enact the standards in order for them to be enforceable and provide, at a minimum, adequate notice to cable operators and subscribers of their enactment?

5. There are several additional questions regarding the role and impact of any Federal standards adopted. First, Section 632(a) preserves the right of a franchising authority generally to establish any customer service requirements. With respect to the customer service standards this Commission may establish, the statute provides certain qualifications. Section 632(c)(1) clearly articulates Congress' intent that local authorities retain the power to adopt consumer protection laws of general applicability, except as they may be specifically preempted by the 1992 Cable Act. It appears that Section 632(c)(2) similarly provides for state and local customer service laws and regulations of general applicability, beyond those adopted by this Commission, although they may be effectively superseded to the extent they are less stringent than the Federal standards we may establish. That subsection also provides that a franchising authority and cable operator may agree to customer service standards beyond those adopted by this Commission. It would seem, then, that local standards specific to cable operators' customer service performance, adopted by mutual agreement, could readily

⁸ See Communications Act of 1934, Section 632(b).

vary from, or at least exceed,⁹ the Federal standards we establish.

6. These specific provisions do not appear to differ materially from section 632 of the Communications Act of 1934, as amended by the 1984 Cable Act.¹⁰ However, whereas section 632(a) of the 1984 Cable Act permitted a franchising authority to impose customer service requirements only as part of an initial franchise award or renewal, the new Cable Act imposes no such limitation. We seek comment on this interpretation of the individual aspects of Section 632, and the interplay between these provisions that we propose in the preceding paragraph.

7. We also seek comment on what impact this section of the Act has on existing franchising agreements, particularly as to whether it permits a franchising authority to modify existing franchise agreements prior to renewal. We ask parties to comment specifically on when, pursuant to the new Act, a local government may impose new customer service standards, and the extent to which existing franchising agreements can or should be grandfathered.¹¹ We deem it unlikely that Congress intended for there to be no changes in customer service requirements prior to the expiration of each current franchise agreement. In this regard, we seek comment on whether the Federal standards we adopt supersede all franchise agreements upon their effective date, or upon affirmative action by respective franchise authorities, as discussed in paragraph 4, above? Would such an interpretation effectively lead to pre-renewal negotiations for new mutually-developed standards where desired by a franchise authority? Is subsection (a) intended to provide authority for a franchise authority to unilaterally establish customer service standards after December 3, 1992 (the effective date of the statute) or some other fixed date, such as the effective date of any rules we establish in this proceeding? Since the Act only requires the Commission to establish Federal standards, and not enforce them,¹² we question and invite comment as to

⁹ We seek comment on whether the Act should be read to preempt franchise authorities from adopting cable customer service standards that -- tailored to the unique needs and resources of a locality -- might fall below the Federal standards in certain respects or cumulatively. Additionally, we seek comment on whether the statute would permit the Commission to grant waivers of the Federal customer service standards and, if so, when such waivers would be required and on what basis such waivers would be justified.

¹⁰ Section 632 of the Communications Act, as amended by the 1984 Cable Act (47 U.S.C. 552) provides: (a) A franchising authority may require, as part of a franchise (including a franchise renewal, subject to section 626), provisions for enforcement of -

(1) customer service requirements of the cable operator, and

(2) construction schedules and other construction-related requirements of the cable operator.

(b) A franchising authority may enforce any provision, contained in any franchise, relating to requirements described in paragraph (1) or (2) or subsection (a), to the extent not inconsistent with this title.

Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not inconsistent with this title. Public Law No. 98-549 Section 632, 98 Stat 2780 (1984).

¹¹ The Senate Committee Report on S.12 states that the Senate's customer service provision would have "grandfather[ed] any standards in existence on the date of enactment." S. Conf. Rep. No. 102-92 at 81. The Conference Committee, however, chose to adopt the House customer service provision, which is silent on this issue. See H.R. Conf. Rep. No. 102-862 at 79. We seek comment on whether this indicates that Congress did not intend to grandfather existing contracts, and whether Congress' goal of improving customer service can be achieved in a timely fashion if franchising authorities cannot amend existing customer service agreements prior to franchise renewal.

¹² Sections 632(a) and (c) of the Communications Act explicitly reserve enforcement authority to the States or franchising authorities.

whether the Commission should have any role with regard to customer service obligations once we have established our standards.

Alternative Approaches for Federal Customer Service Standards

8. Section 8 of the Act amends section 632(b) of the Communications Act of 1934 to require the Commission to "establish standards by which cable operators may fulfill their customer service requirements." Such standards shall address, at a minimum, requirements governing office hours, telephone availability, installations, outages, service calls, and communications between the cable operator and the subscriber, including standards governing billing and refunds.¹³ As discussed above, the statute and legislative history suggest that the Commission shall establish "flexible" standards, which would leave State and local governments the opportunity to impose more stringent requirements based on individual community needs.¹⁴

9. The Commission has previously considered implementing the customer service standards recommended by NCTA, which address each of the factors set forth in Section 632(b) of the Act.¹⁵ In fact, the Congress has suggested that the NCTA standards may be an appropriate "benchmark" for the Federal standards to be adopted in this proceeding.¹⁶ Nevertheless, both the legislative history and comments in our own past proceedings reflect the competing concerns that these standards, like other national standards, are unworkable, burdensome, or inadequate.¹⁷

10. We therefore seek comment on the customer service standards to be adopted in this proceeding. Specifically, we ask whether the NCTA's standards (or some modification thereof) may provide an appropriate Federal customer service benchmark.¹⁸ We also seek comment on other standards, more or less stringent than NCTA's, that have been established

¹³ The particular aspects of customer service specified in the statute and raised here appear to address the primary complaints as evidenced in legislative history and our own experience. Given the local franchising authorities' ability to adopt additional requirements as needed, we do not believe additional Federal provisions are needed. Commenters may address this issue.

¹⁴ See H.R. Rep. No. 102-628, supra, at 37. See also Communications Act, Section 632.

¹⁵ In its effective competition proceeding, the Commission proposed using the NCTA standards as part of a proposed "good actor" or "competitive behavior" test. The Commission, however, did not adopt that test and did not specifically address the merits of the NCTA standards in the proceeding. See Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, 6 FCC Rcd 4545, 4554 (1991) (Effective Competition). See also Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd 4962, 4991-92 (1990). (1990 Cable Report).

¹⁶ See H.R. Rpt. No. 102-628, supra, at 105. ("The Committee recognizes the difficulty of establishing a uniform set of national standards that can be applied equally to all cable systems, regardless of size, and in all parts of the country, regardless of marketplace characteristics. The [NCTA's] voluntary standards, which have been adopted not only [by] the NCTA but also CATA, another trade association of cable operators, attempt to address these differences. The industry's voluntary standards represent a welcome initiative, which the Commission may use as a benchmark in establishing customer service standards.")

¹⁷ See H.R. Rep. No. 102-628, supra, at 34-37, 105-106; S. Conf. Rep. No. 102-92, supra, at 20-22; Effective Competition, supra, at 4555.

¹⁸ Parties commenting in this regard may also wish to revisit any issue raised with respect to the NCTA standards noted in prior Commission proceedings, e.g., Effective Competition or 1990 Cable Report.

by various cable, government and consumer groups. Parties should provide information on: 1) the extent the NCTA standards, or any other standards, may have been adopted within the industry or in conjunction with franchise agreements; and 2) the levels of cable operator compliance and customer satisfaction achieved under such standards. Parties may also comment on whether it is appropriate for local authorities to be responsible for 1) setting time frames in which to comply with standards, 2) overseeing compliance and determining how compliance should be measured, 3) establishing penalties for violations of the standards,¹⁹ or 4) imposing specific billing and refund procedures²⁰?

11. Turning to the NCTA standards, the first area addressed relates to office and measurement of compliance by telephone availability and provides:

- A. Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, cable systems will staff telephones for supplemental hours on weekdays and/or weekends.
- B. Under normal operating conditions, telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, shall not exceed 30 seconds.

Those systems which utilize automated answering and distributing equipment will limit the number of routine rings to four or fewer. Systems not utilizing automated equipment shall make every effort to answer incoming calls as promptly as the automated systems. This standard shall be met no less than ninety percent of the time measured on an annual basis.²¹

- C. Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the cable office is open for business.
- D. Customer service center and bill payment locations will be open for transactions Monday through Friday during normal business hours. Additionally, based on community needs, cable systems will schedule supplemental hours on weekdays and/or weekends during which these centers

¹⁹ We seek comment on whether the new Cable Act provides enforcement authority above and beyond that which is permitted under the customer service section of the 1984 Cable Act, e.g., can a franchising authority require an operator to provide a remedy for each violation, or are violations punishable only during franchise renewal by denial of the franchise?

²⁰ Parties are also asked to address the impact of the billing and refund provisions in this section on other relevant provisions of the Act, including, for instance, the rate rollback and refund provisions (Section 3), and the subscriber bill itemization requirement (Section 14).

²¹ The NCTA standards contemplate that systematic measurement of certain standards, e.g., telephone answering time, may not be cost effective for and should not be expected of cable systems with fewer than 10,000 subscribers. For this, as for other elements of the 1992 Cable Act, various exemptions, exceptions and waiver standards are explicitly or implicitly suggested or provided, based on the size of a system. For each provision, the size of the exception should be related to the nature of the burden imposed by the particular provision. With this in mind, we seek comment on whether our own standards should include such an exemption for measurement of compliance by small systems and whether such an exception is within the requirements of the statute.

will be open.

12. Difficulties that subscribers have had in communicating with their local cable systems operators, including busy telephone lines and telephone calls placed on hold for long periods, have been a clear area of consumer discontent.²² While the foregoing standards would appear to respond to these concerns, they are directed toward communications during normal business hours. Because the highest levels of television viewing occur outside of these hours, we seek comment on how "normal operating hours," or other terms affecting service obligations, should be defined and how communications outside of normal operating hours should be addressed.

13. The second area under the NCTA standards relates to installations, outages and service calls and provides:

Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on an annual basis:

- A. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are up to 125 feet from the existing distribution system.

(The NCTA standards contemplate that systematic measurement of certain standards, e.g., telephone answering time, may not be cost effective for and should not be expected of cable systems with fewer than 10,000 subscribers.) We seek comment of whether our own standards should include such an exemption for small systems and whether such an exception is within the requirements of the statute. Parties also should comment on the definition of "small cable systems."

- B. Excluding those situations beyond the control of the cable operator, the cable operator will respond to service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.
- C. The appointment window alternatives for installations, service calls, and other installation activities will be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based on community needs, cable systems will schedule supplemental hours during which appointments can be set.
- D. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer.

14. Within these standards arises the question of how to address installation or service calls. Subscribers that stay at home awaiting an installation or repair crew that does not appear at the scheduled time understandably feel aggrieved. This is particularly the case

²² See S. Conf. Rep. No. 102-92, supra, at 20.

standard in the absence of an agreement may be the midpoint (45 seconds), the more stringent standard in the range (30 seconds), or the less stringent standard (one minute). Finally, we seek comment on whether the Commission could, consistent with the Act, adopt an "escalating benchmark" approach that would reasonably increase the service minimums over time as cable operators demonstrate improvements in their customer service efforts. Such an approach would enhance service to consumers, if done in a manner that takes into account the resource differences discussed above.

20. As a final matter, in order that the standards be clearly understood and uniformly measurable and enforceable, we seek comment on whether the Commission should define in detail the meaning of any terms included in the NCTA or other proposals, and, if so, we request that commenting parties provide specific definitions and focus in detail on the measurement standards. For example, terms such as "normal business hours" or "service interruptions" may vary depending on the size of the system or may be influenced by circumstances beyond the control of the operator (like extreme weather conditions or power outages) as well as events within the control of a cable system (such as foreseeable seasonal or promotional peak demand periods.) We request comment on whether Federal standards should address these or other factors.

III. ADMINISTRATIVE MATTERS

Ex Parte Rules - Non-Restricted Proceeding

21. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

Comment Information

22. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before **January 11, 1993**, and reply comments on or before **January 26, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

Regulatory Flexibility Act

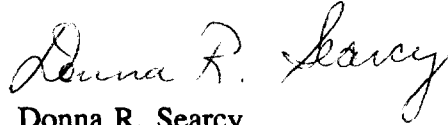
23. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section

603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. Sections 601 et seq. (1981)).

Additional Information

24. For further information concerning this proceeding, contact Ellen Schned, Office of Legislative Affairs, at (202) 632-6405, or Alan Aronowitz, Mass Media Bureau, at (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Donna R. Searcy".

Donna R. Searcy
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action.

This proceeding is being implemented in order to seek comment on the best way to implement section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, relating to cable consumer protection and customer service.

Objectives.

The Commission's goal is to provide notice and opportunity to comment to members of the public regarding implementation of section 8 of the new Act, which concerns Federal standards of customer service for cable system operators.

Legal Basis.

Authority for this proposed rule making is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, and section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385 (1992).

Reporting, Recordkeeping and other Compliance Requirements

The Commission is asking for comment concerning what Federal standards to adopt to govern cable consumer protection and customer service.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule.

None.

Description, Potential Impact, and Number of Small Entities Involved.

The rules proposed in this proceeding could impose new burdens on cable operators, including smaller systems, if the Federal customer service standards proposed in this rule or other, more extensive standards, are enacted and enforced by State or local governments.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.

Undetermined at this time. Comment is specifically sought on this matter.